

1 IRENE K. YESOWITCH State Bar #111575
 2 IYesowitch@longlevit.com
 3 DAVID P. BOROVSKY State Bar #216588
 4 DBorovsky@longlevit.com
 5 LONG & LEVIT LLP
 6 465 California Street, Suite 500
 7 San Francisco, CA 94104
 8 TEL: (415) 397-2222 FAX: (415) 397-6392

9 Attorneys for Defendants
 10 AMCO INSURANCE COMPANY and ALLIED
 11 PROPERTY AND CASUALTY INSURANCE
 12 COMPANY

13 IN UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 PREMIERE VENDANGE PARTNERS LLC
 17 dba REALM CELLARS,

18 Plaintiff,

19 vs.

20 AMCO INSURANCE COMPANY; a
 21 corporation, ALLIED PROPERTY AND
 22 CASUALTY INSURANCE COMPANY, also
 23 known as ALLIED INSURANCE, a
 24 corporation; and DOES 1-50 inclusive,

25 Defendants.

CASE No.

NOTICE OF AND PETITION FOR
 REMOVAL OF ACTION UNDER 28
 U.S.C. SECTION 1441(B)
 (DIVERSITY)

CERTIFICATION OF INTERESTED
 ENTITIES OR PERSONS

DEMAND FOR JURY TRIAL

26 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

27 PLEASE TAKE NOTICE that defendants AMCO INSURANCE COMPANY
 28 ("AMCO") and ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY
 ("ALLIED")(collectively "defendants") jointly hereby remove to this Court the state court
 action described below.

1. *Jurisdiction* - This action is a civil action over which this court has original
 jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by
 defendants pursuant to the provisions of 28 U.S.C. §1441(b) in that it is a civil action between

///

1 citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive
2 of interest and costs.

3 2. *Intradistrict Assignment*— Removal to the San Francisco Division of this Court
4 is appropriate because the original case which defendants seek to remove was filed in the
5 Superior Court of California, County of Napa. Defendant is informed and believes that this
6 action “arose”, within the meaning of Local Rule 3.2(c), in the County of Napa, making the San
7 Francisco Division a proper division for assignment of this case.

8 3. On or about January 26, 2007, an action was commenced in the Superior Court of
9 the State of California in and for the County of Napa, entitled “PREMIERE VANDANGE
10 PARTNERS LLC dba REALM CELLARS”, as Case No. 26-36474 (the “Complaint”). Service
11 of the Complaint and summons was effective on July 3, 2007, when counsel for defendants
12 signed a “Notice and Acknowledgement of Receipt-Civil”. True copies of plaintiff’s summons,
13 complaint, and all materials received concurrently therewith, including the signed “Notice and
14 Acknowledgement of Receipt-Civil” are attached hereto as Exhibit “1”.

15 4. The core allegations of the Complaint arise from a dispute over the amount of
16 policy benefits due plaintiff under a commercial property insurance policy, number ACP-
17 7821413949, issued by AMCO to plaintiff which was in effect for the policy period from
18 October 7, 2005 to October 7, 2006, (the “AMCO Policy”). According to the Complaint, on or
19 about October 12, 2005, plaintiff’s property (wine) suffered fire damage while stored in a wine
20 storage warehouse in Vallejo, California. Plaintiff alleges that this loss was tendered to
21 defendants, who allegedly “wrongfully denied coverage for a portion of the claim on or about
22 February 21, 2006”. Plaintiff concedes that AMCO paid certain amounts due to plaintiff
23 because of the loss, but asserts that defendants failed to pay the full amount that it was obligated
24 to pay under the policy. The complaint alleges damages “in an amount in excess of
25 \$1,300,000”.

26 5. On or about January 26, 2007, plaintiff sued defendants for breach of contract
27 and declaratory relief. On or about August 1, 2007, defendants filed an answer to the Complaint
28 in Napa County Superior Court. A true copy of this answer is attached hereto as Exhibit “2”.

1 To defendants' knowledge, besides this answer, and plaintiff's Complaint, no additional papers
 2 have been filed with the Superior Court in this matter, as defendants have been served with no
 3 other papers.

4 6. *Amount In Controversy*—The complaint specifically alleges that defendants are
 5 obligated to pay plaintiff "an amount in excess of \$1,300,000 under the subject insurance policy.
 6 Moreover, in addition to damages for breach of contract, the complaint seeks to recover
 7 attorney's fees.

8 7. *Diversity*—defendants are informed and believes that plaintiff was, and still is, a
 9 corporation duly incorporated in the State of California, with its principal place of business in
 10 the county of Napa. Defendants were at the time of the filing of this action, and still are, a
 11 citizens of the state of Iowa, because they each is incorporated under the laws of the Iowa and
 12 each has its principal place of business in Iowa.

13 8. Written notice of the filing of this Petition will be given to plaintiff as required by
 14 law.

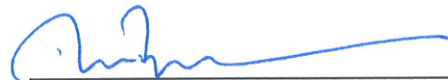
15 9. A true copy of this Petition will be filed with the Clerk of the Superior Court of
 16 the State of California, County of Napa, as required by law.

17 WHEREFORE, defendants pray that this action be removed to this Court, and that this
 18 Court accept jurisdiction of this action, and henceforth that this action be placed on the docket of
 19 this Court for further proceedings, the same as though this action had originally been instituted in
 20 this Court.

21 Dated: August 1, 2007

LONG & LEVIT LLP

22
 23 By



24 IRENE K. YESOWITCH
 25 DAVID P. BOROVSKY
 26 Attorneys for Defendants
 27 AMCO INSURANCE COMPANY and
 28 ALLIED PROPERTY AND
 CASUALTY INSURANCE COMPANY

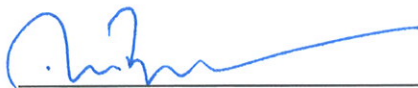
CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil Local Rule 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: Nationwide Insurance Company, Nationwide Mutual Insurance Company.

Dated: August 1, 2007

LONG & LEVIT LLP

By



IRENE K. YESOWITCH
DAVID P. BOROVSKY
Attorneys for Defendants
AMCO INSURANCE COMPANY and
ALLIED PROPERTY AND CASUALTY
INSURANCE COMPANY

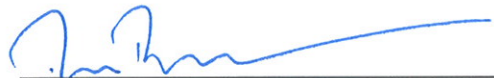
DEMAND FOR JURY TRIAL

Defendants demand a jury trial.

Dated: August 1, 2007

LONG & LEVIT LLP

By



IRENE K. YESOWITCH
DAVID P. BOROVSKY
Attorneys for Defendants
AMCO INSURANCE COMPANY and
ALLIED PROPERTY AND CASUALTY
INSURANCE COMPANY

DOCS\S5240-267\536157.V1

PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, Suite 500, San Francisco, CA 94104.

On August 1, 2007, I served the documents named below on the following attorney(s) of record and/or interested parties in the case of *Premiere Vendange Partners LLC v. AMCO Insurance Company, et al.*, United States District Court, Northern District of California, San Francisco Division, Case No. _____.

CIVIL COVER SHEET

NOTICE AND PETITION FOR REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(B) (DIVERSITY)

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS


DEMAND FOR JURY TRIAL

SERVED UPON:

Deborah S. Ballati, Esq.
Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Tel: (415) 954-4400
Fax: (415) 954-4480
Attorneys for Plaintiff:
Premiere Vendange Partners LLC dba Realm Cellars

- ☒ (BY MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing with the United States Postal Service. I caused such document(s) to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at San Francisco, California, that same day in the ordinary course of business.
- ☒ (BY FACSIMILE) I caused the document(s) described herein to be transmitted from facsimile number (415) 397-6392 to the facsimile number(s) for each party indicated above.
- ☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 1, 2007, at San Francisco, California.


Erika Calderon

DOCS\5240-267\537132.V1

EXHIBIT 1

SUMMONS (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

AMCO INSURANCE COMPANY, a corporation, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, also known as ALLIED INSURANCE, a corporation, and DOES 1 through 50

ENDORSED

JAN 26 2007

Clerk of the Napa Superior Court

By: J. OLIVER
Deputy

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

PREMIERE VENDANGE PARTNERS LLC dba REALM CELLARS

DELAY REDUCTION CASE

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Napa County Superior Court
(Historic Courthouse)
825 Brown Street
Napa, CA 94559-3031

CASE NUMBER:
(Número del Caso):

26 - 36474

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Deborah S. Ballati
Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

415-954-4480

DATE:

(Fecha)

JAN 26 2007

Clerk, by

(Secretario)

J. OLIVER

Stephen A. Bouch

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): ALLIED PROPERTY AND CASUALTY INSURANCE CO.

- under:
- | | |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

- ☐ by personal delivery on (date):

Page 1 of 1

CM-010

FOR COURT USE ONLY

ENDORSED

JAN 26 2007

Clerk of the Napa Superior Court
By: J. OLIVER
Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Deborah S. Ballati
Deborah S. Ballati (State Bar #067424)
Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

TELEPHONE NO.: 415-954-4400 FAX NO.: 415-954-4480

ATTORNEY FOR (Name): PREMIERE VENDANGE PARTNERS LLC dba REALM CELLERS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa

STREET ADDRESS: (Historic Courthouse)

MAILING ADDRESS: 825 Brown Street

CITY AND ZIP CODE: Napa, CA 94559-3031

BRANCH NAME:

CASE NAME: PREMIERE VENDANGE PARTNERS LLC vs. AMCO
INSURANCE COMPANY ET AL.

CASE NUMBER:

26-36474

JUDGE:

DEPT:

CIVIL CASE COVER SHEET☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)☐ **Limited**
(Amount
demanded is
\$25,000 or less)**Complex Case Designation**☐ **Counter** ☐ **Joinder**Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort☐ Auto (22)
☐ Uninsured motorist (46)**Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort**☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)**Non-PI/PD/WD (Other) Tort**☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)**Employment**☐ Wrongful termination (36)
☐ Other employment (15)**Contract**☐ Breach of contract/warranty (06)
☐ Collections (09)
☒ Insurance coverage (18)
☐ Other contract (37)**Real Property**☐ Eminent domain/inverse
condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)**Unlawful Detainer**☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)**Judicial Review**☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)**Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)**☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)**Enforcement of Judgment**☐ Enforcement of judgment (20)**Miscellaneous Civil Complaint**☐ RICO (27)
☐ Other complaint (not specified above) (42)**Miscellaneous Civil Petition**☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

- a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 2

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 1/26/07

Deborah S. Ballati

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ENDORSED

JAN 26 2007

Clerk of the Napa Superior Court
By: J. OLIVER
Deputy

Deborah S. Ballati (State Bar No. 067424)
Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480

Attorneys for Plaintiff
PREMIERE VENDANGE PARTNERS LLC dba
REALM CELLARS

JUDGE MANAGEMENT CONFERENCE
DATE: 7-5-07
TIME: 8:30am
PLACE: Courtroom A
113 Brown Street, Napa CA 94559

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NAPA

(Unlimited Civil) **DELAY REDUCTION CASE**

PREMIERE VENDANGE PARTNERS
LLC dba REALM CELLARS,

Plaintiff,

vs.

AMCO INSURANCE COMPANY, a
corporation, ALLIED PROPERTY AND
CASUALTY INSURANCE COMPANY,
also known as ALLIED INSURANCE, a
corporation, and DOES 1 through 50,

Defendants.

Case No.

26-36474

COMPLAINT FOR BREACH OF
CONTRACT AND DECLARATORY RELIEF

Plaintiff PREMIERE VENDANGE PARTNERS LLC dba REALM CELLARS

("PREMIERE VENDANGE" or "Plaintiff") alleges as follows:

GENERAL ALLEGATIONS

1. PREMIERE VENDANGE is, and at all relevant times mentioned herein was, a limited liability corporation organized and existing under the laws of the State of California and qualified to do business within the State of California.

2. PREMIERE VENDANGE is informed and believes, and on that basis alleges, that

1 Defendant AMCO INSURANCE COMPANY ("AMCO" or "Defendant") is a corporation
 2 incorporated under the laws of the State of Iowa and does business in the State of California.

3 3. PREMIERE VENDANGE is informed and believes, and on that basis alleges, that
 4 Defendant ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, also known as
 5 ALLIED INSURANCE ("ALLIED" or "Defendant") is a corporation incorporated under the laws
 6 of the State of Iowa and does business in the State of California.

7 4. PREMIERE VENDANGE is ignorant of the true names and capacities of
 8 Defendants sued herein as DOES 1 through 50 ("Defendants"), inclusive, and on that basis
 9 alleges, that these Defendants are legally responsible in some manner for the acts, omissions, and
 10 events alleged in the Complaint. Accordingly, PREMIERE VENDANGE sues Defendants DOES
 11 1 through 50, inclusive, by such fictitious names. PREMIERE VENDANGE prays for leave to
 12 amend this Complaint to properly name and charge each such Defendant when all necessary facts
 13 have been ascertained.

14 5. PREMIERE VENDANGE is informed and believes, and on that basis alleges, that
 15 each of the Defendants sued herein is responsible in some manner for the occurrences herein
 16 alleged and that PREMIERE VENDANGE's damages, as herein alleged, were proximately
 17 caused by Defendants, and each of them.

18 6. PREMIERE VENDANGE is informed and believes, and on that basis alleges, that
 19 at all times herein mentioned each of the Defendants sued herein performed the acts and
 20 omissions alleged in this Complaint as the agent and/or employee of each of the remaining
 21 Defendants, and that while committing the acts and omissions alleged in this Complaint, each
 22 Defendant was acting within the purpose and scope of such agency or employment.

23 7. This court is the proper court because the above-named Defendants, and each of
 24 them, entered into the contract at issue (set forth more fully in Paragraphs 9 and 10, below) with
 25 PREMIERE VENDANGE in Napa County, California, and this contract was to be performed in
 26 Napa and Solano Counties, California.

27 ///

28 ///

FIRST CAUSE OF ACTION

(Breach of Contract Against AMCO, ALLIED and DOES 1 – 50 (collectively “Defendants”))

8. PREMIERE VENDANGE realleges and incorporates by reference the allegations of Paragraphs 1 through 7 as if fully set forth herein.

9. Defendants issued a Commercial Property Insurance Policy, No. FPK ABPP 7821413040 (the “Policy”) to PREMIERE VENDANGE.

10. The Policy included Property Amendatory Endorsement number CP 71 00 01 04.

11. On or about October 12, 2005, during the 10/7/2005 – 10/7/2006 Policy year, a fire occurred at the Vallejo wine storage warehouse. PREMIERE VENDANGE suffered damage to wine stored at the warehouse, which is covered under the Policy.

12. On or about October 13, 2005, PREMIERE VENDANGE duly tendered a claim under the Policy to Defendants for the damages that PREMIERE VENDANGE suffered as a result of the fire (“the Claim”).

13. Defendants, and each of them, wrongfully denied coverage for a portion of the Claim on or about February 21, 2006.

14. PREMIERE VENDANGE has performed all obligations required of it under the Policy.

15. Defendants, and each of them, have breached their obligations to PREMIERE VENDANGE by refusing to fully cover the Claim.

16. As a direct and proximate result of Defendants’ breach of contract, PREMIERE VENDANGE has been damaged in an amount in excess of \$1,300,000.

WHEREFORE, PREMIERE VENDANGE requests relief as set forth below.

SECOND CAUSE OF ACTION

(Declaratory Relief As To AMCO, ALLIED and DOES 1 – 50 (collectively “Defendants”))

17. PREMIERE VENDANGE realleges and incorporates by reference the allegations

1 of Paragraphs 1 through 16 as if fully set forth herein.

2 18. An actual and justifiable controversy has arisen between PREMIERE
3 VENDANGE and Defendants, and each of them. PREMIERE VENDANGE contends that
4 Defendants, and each of them, have a duty under the Policy to cover the Claim, as alleged above.
5 Defendants, and each of them, deny that they have such a duty to PREMIERE VENDANGE.
6 PREMIERE VENDANGE therefore seeks a judicial determination that the Policy covers the
7 Claim. Such a judicial determination is necessary and appropriate so that PREMIERE
8 VENDANGE and Defendants, and each of them, may ascertain their rights and duties under the
9 Policy.

10 WHEREFORE, PREMIERE VENDANGE requests relief as set forth below.

11
12 PRAYER

13 WHEREFORE, PREMIERE VENDANGE prays for relief against Defendants, and each
14 of them, as follows:

- 15 1. For damages in an amount to be proven at trial;
- 16 2. For a declaration that Defendants, and each of them, are obligated under the Policy
17 to pay PREMIERE VENDANGE in full for the damages it has suffered as a result
18 of the warehouse fire;
- 19 3. For costs of suit incurred herein, including reasonable attorneys' fees; and
- 20 4. For such other and further relief as the Court deems just and proper.

21
22 DATED: January 26, 2007

FARELLA BRAUN & MARTEL LLP

23
24 By: Deborah S. Ballati
25 Deborah S. Ballati

26 Attorneys for Plaintiff
27 PREMIERE VENDANGE PARTNERS
28 LLC dba REALM CELLARS

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Deborah S. Ballati (State Bar #067424) Farella Braun & Martel LLP 235 Montgomery Street, 17th Floor San Francisco, CA 94104 TELEPHONE NO.: 415-954-4400 FAX NO. (Optional): 415-954-4480 E-MAIL ADDRESS (Optional): dballati@fbm.com ATTORNEY FOR (Name): PREMIERE VENDANGE PARTNERS LLC dba REALM C	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa STREET ADDRESS: (Historic Courthouse) 825 Brown Street MAILING ADDRESS: CITY AND ZIP CODE: Napa, CA 94559-3031 BRANCH NAME:	
PLAINTIFF/PETITIONER: PREMIERE VENDANGE PARTNERS LLC dba REALM CELLARS DEFENDANT/RESPONDENT: AMCO INSURANCE COMPANY, a corporation, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 26-36474

TO (insert name of party being served): ALLIED PROPERTY AND CASUALTY INSURANCE CO.

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: June 12, 2007

Deborah S. Ballati

(TYPE OR PRINT NAME)

► Deborah S. Ballati /ko

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

- ☒ A copy of the summons and of the complaint.
- ☒ Other: (specify): Civil Cover Sheet

(To be completed by recipient):

Date this form is signed: July 3, 2007

Irene Yesoukhi for Defendants

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)

► Irene Yesoukhi

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

EXHIBIT 2

1 IRENE K. YESOWITCH State Bar #111575
2 DAVID P. BOROVSKY State Bar #216588
3 LONG & LEVIT LLP
4 465 California Street, Suite 500
5 San Francisco, CA 94104
6 TEL: (415) 397-2222 FAX: (415) 397-6392

Attorneys for Defendants
AMCO INSURANCE COMPANY and ALLIED
PROPERTY AND CASUALTY INSURANCE
COMPANY

7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF NAPA

10
11 PREMIERE VENDANGE PARTNERS LLC
12 dba REALM CELLARS,

Plaintiff,

13 vs.

14 AMCO INSURANCE COMPANY; a
15 corporation, ALLIED PROPERTY AND
16 CASUALTY INSURANCE COMPANY, also
17 known as ALLIED INSURANCE, a
18 corporation; and DOES 1-50 inclusive,

Defendants.

CASE No. 26-36474

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT FOR
BREACH OF CONTRACT AND
DECLARATORY RELIEF**

19 Defendants AMCO INSURANCE COMPANY and ALLIED PROPERTY AND
20 CASUALTY INSURANCE COMPANY ("Defendants") answer the complaint of Plaintiff
21 PREMIERE VENDANGE PARTNERS LLC dba REALM CELLARS ("Plaintiff") as follows:

22 **GENERAL DENIAL**

23 Pursuant to the provisions of California Code of Civil Procedure section 431.30(d),
24 Defendants deny each and every allegation of the complaint, generally and specifically, and in
25 particular, deny that Plaintiff was damaged in any sum, or at all.

26 **AFFIRMATIVE DEFENSES**

27 As separate affirmative defenses to the Complaint, Defendants allege:

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims against defendant ALLIED PROPERTY AND CASUALTY COMPANY are barred because this defendant issued no policy of insurance to plaintiff and therefore owed it no contractual obligations.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the terms, provisions and conditions of the insurance policy under which Plaintiff seeks relief.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because defendants, and each of them, have paid all contractual benefits owed to plaintiff under the insurance policy under which Plaintiff seeks relief.

FOURTH AFFIRMATIVE DEFENSE

The insurance policy under which Plaintiff seeks relief is void by reason of plaintiff's fraud and/or intentional concealment and/or misrepresentation of a material fact(s) in the presentation of the subject insurance claim.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because defendants are entitled to rescission of the insurance policy under which Plaintiff seeks relief.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

PRAYER

WHEREFORE, Defendant requests that the court enter judgment in this action as follows:

1. That plaintiff takes nothing by its complaint;
2. For a judicial determination that defendants had no obligation under the express or implied terms of the relevant insurance policy to provide any additional insurance benefits beyond those paid to date;
3. That judgment be rendered in favor of defendants;

///


1 4. That plaintiff be ordered to repay all benefits paid by defendants to date under the
2 subject insurance policy by reason of plaintiff's conduct voiding the policy;

3 5. That defendants be awarded costs of suit incurred herein, including reasonable
4 attorneys' fees; and

5 6. For such other and further relief as the Court deems just and proper.

6 Dated: August 1, 2007

LONG & LEVIT LLP

7
8 By 
9 IRENE K. YESOWITCH
10 DAVID P. BOROVSKY
11 Attorneys for Defendants
AMCO INSURANCE COMPANY and
CASUALTY INSURANCE COMPANY

12 DOCS\55240-267\536154.V1
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, Suite 500, San Francisco, CA 94104.

On August 1, 2007, I served the documents named below on the following attorney(s) of record and/or interested parties in the case of *Premiere Vendange Partners LLC dba Realm Cellars v. AMCO Insurance Company, et al.*, Superior Court of California, County of Napa, Case No. 26-36474.

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FOR
BREACH OF CONTRACT AND DECLARATORY RELIEF**

SERVED UPON:

Deborah S. Ballati, Esq.
Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Tel: (415) 954-4400
Fax: (415) 954-4480
Attorneys for Plaintiff:
*Premiere Vendange Partners LLC dba Realm
Cellars*

☒ (BY MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing with the United States Postal Service. I caused such document(s) to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at San Francisco, California, that same day in the ordinary course of business.

☒ (BY FACSIMILE) I caused the document(s) described herein to be transmitted from facsimile number (415) 397-6392 to the facsimile number(s) for each party indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 1, 2007, at San Francisco, California.



Erika Calderon

DOCS\S5240-267\537133.V1

FAX COVERSHEET**LONG & LEVIT LLP**

ATTORNEYS AND COUNSELORS AT LAW

THIS TRANSMISSION IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Date: August 1, 2007

Please deliver the following page(s) to:

ADDRESSEE**FAX NO.****PHONE**

Deborah S. Ballati, Esq.
Farella Braun & Martel LLP

(415) 954-4480

(415) 954-4400

SENT BY:

: Irene K. Yesowitch

SENDER ID: 178**TOTAL PAGES:**: Twenty (20) Including coversheet**CASE NAME:**: *Premiere Vendange v. AMCO Insurance Company, et al.***CASE NUMBER:**: **S5240.267****DOCUMENT SENT:**

: Notice of and Petition for Removal of Action

MESSAGE

:

Original will not follow

FAXED

Operator's Name

Signature

The LONG & LEVIT LLP fax number is (415) 397-6392. If you do not receive all pages, please call the fax operator at (415) 397-2222, Ext. 4459 as soon as possible.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4725
RECIPIENT ADDRESS 9544480
DESTINATION ID
ST. TIME 08/01 14:13
TIME USE 03'56
PAGES SENT 20
RESULT OK

465 California Street, Suite 500, San Francisco, CA 94104, Tel: 415-397-2222, Fax: 415-397-6392, www.longlevit.com
The LONG & LEVIT LLP fax number is (415) 397-6392. If you do not receive all pages, please call the fax operator at (415) 397-2222, Ext. 4459 as soon as possible.

Operator's Name
Signature

Original will not follow

MESSAGE
DOCUMENT SENT: Notice of and Petition for Removal of Action
CASE NUMBER: S5240.267
CASE NAME: *Premiere Vendange v. AMCO Insurance Company, et al.*
TOTAL PAGES: Twenty (20) Including coversheet
SENT BY: Irene K. Yesowitch
SENDER ID: 178
ADDRESS: Deborah S. Ballat, Esq.
Farella Braun & Martel LLP
(415) 954-4480
FAX NO. (415) 954-4400
PHONE
Please deliver the following page(s) to:

Date: August 1, 2007